



22 CFR Part 41

[Public Notice: 11462]

RIN 1400-AF34

Visas: Nonimmigrant Visas

AGENCY: Department of State

ACTION: Final rule.

SUMMARY: The Department of State (Department) is amending its regulation governing nonimmigrant visas by amending its rules to remove references to the North American Free Trade Agreement (NAFTA) and replace them with references to the United States-Mexico-Canada Agreement (USMCA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Claire Kelly, Office of Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St. NW, Washington, DC 20006, (202) 485-7586.

SUPPLEMENTARY INFORMATION:

What changes is the Department making to 22 CFR 41.12 and 41.59?

The Department is amending 22 CFR 41.12 and 41.59 to remove references to NAFTA and replace them with references to the USMCA, which entered into force on July 1, 2020, and replaced NAFTA.

I. Regulatory Findings

Administrative Procedure Act

This rule is issued without prior notice and comment, with an effective date 30 days after publication in the *Federal Register*, pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. 553(b)(3)(A) and (d)(2), because it re-states existing agency procedure or practice. As

noted in the Preamble, the USMCA has replaced NAFTA, and visas previously issued to NAFTA professionals are now issued to USMCA professionals. Congress has amended 8 U.S.C. 1184(e) to replace references to NAFTA with references to the USMCA. The purpose of this rule is to make technical corrections to the regulatory text to replace references to NAFTA with references to USMCA, and consequently, it is not subject to the notice and comment rulemaking procedures set forth in 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804(2), for purposes of congressional review of agency rulemaking. The Department does not believe that this rule will result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866, and 13563: Reducing Regulation and Controlling Regulatory Cost

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563, and has determined

that the benefits of this regulation, *i.e.*, updating these rules to reflect the current agreement, outweigh any cost imposed by this rulemaking, which the Department assesses to be minimal.

Executive Orders 12372 and 13132: Federalism

While the USMCA itself may have an effect on States, this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any reporting or record-keeping requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Passports and visas.

Accordingly, under the authority 8 U.S.C. 1104 and 22 U.S.C. 2651(a), 22 CFR part 41 is amended as follows:

**PART 41 -- VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE
IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1101; 1102; 1104; 1182; 1184; 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295); 1323; 1361; 2651a.

2. Amend § 41.12 by revising the introductory text and revising the entries for “TD” and “TN” in the table to read as follows:

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided on the visa. The following visa symbols shall be used:

Symbol	Class	Section of law
	* * * * *	
TN	USMCA Professional	214(e)(1).
TD	Spouse or Child of a USMCA Professional	214(e)(1).
	* * * * *	

3. Revise § 41.59 to read as follows:

§ 41.59 Professionals under the United States-Mexico-Canada Agreement (USMCA).

(a) *Requirements for classification as a USMCA professional.* An alien shall be classifiable under the provisions of INA 214(e) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The alien shall have presented to the consular officer sufficient evidence of an offer of employment in the United States requiring employment of a person in a professional capacity consistent with Section D and Appendix 2 of Annex 16-A of Chapter 16 of the USMCA and sufficient evidence that the alien possesses the credentials of that profession as listed in said appendix; or

(3) The alien is the spouse or child of an alien so classified in accordance with paragraph (a)(2) of this section and is accompanying or following to join the principal alien.

(b) *Visa validity.* The period of validity of a visa issued pursuant to paragraph (a) of this section may not exceed the period established on a reciprocal basis.

(c) *Temporary entry.* Temporary entry means an entry into the United States without the intent to establish permanent residence. The alien must satisfy the consular officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart upon completion of the assignment.

(d) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Secretary of Homeland Security and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

Kevin E. Bryant,

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Office of Directives Management,

Department of State.

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